IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.51152-M of 2005

Date of Decision: December 06, 2006

Ashwini Kakkar and others

...Petitioners

VERSUS

Union Territory, Chandigarh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Baldev Kapoor, Advocate,
for the petitioners.

Ms.Meenakshi Dogra, Advocate,
for U.T.Chandigarh.

Mr.N.P.Sinha, Advocate,
for respondent No.2.

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The petitioners, who are managing the company by the name of Thomas Cook (India) Ltd., Mumbai have sought quashing of the complaint No.221 of 2004, titled as Ram Asra Singla Vs. Managing Director, Thomas Cook (India) Ltd. and others, pending in the court of Judicial Magistrate Ist Class, Chandigarh and also of the summoning order passed in the said

complaint.

Thomas Cook (India) Ltd., Mumbai (hereinafter called the `petitioner Company') is engaged in the business of conducting and organising tours and travels, besides in the business of foreign exchange. Company by the name of M/s Parikarma World Travels of Ludhiana approached the petitioner Company for marketing its products and services. Believing the credentials of this company, the petitioner Company appointed Parikarma World Travels as non-exclusive agents for promotion, marketing and distribution of its products developed, promoted and marketed. The terms and conditions were also agreed to between both the concerns. It is averred in the petition that Parikarma Word Travels was specifically restrained not to make or give any representations, warranties or guarantees on behalf of the petitioner Company. M/s Parikarma World Travels was not providing satisfactory services and hence its agency was terminated.

The complainant-respondent had approached M/s Parikarma World Travels on 20.8.2002 for arranging a tour by the name “Discover America” and paid a sum of Rs.20,000/- for booking of the said tour for himself and his wife. A receipt in this regard was issued by M/s Parikarma World Travels. It is disclosed in the petition that this money was never transferred to the petitioner Company and remained with M/s Parikarma World Travels, though a certificate has been issued by Delhi office of the petitioner Company, indicating the booking done by the complainant. The complainant thereafter did not deposit the remaining amount nor gave any intimation if he or his wife was desirous of undertaking the said tour or whether they had been

given Multiple Entry U.S.Visa. The booking details also contained stipulation in regard to deduction of some amount in case visa application was rejected. The petition would reveal that complainant had applied for Multiple Entry Visa for himself and his wife, but still did not intimate anything in this regard either to the petitioner company or to Parikarma World Travels. After a long gap, however, the complainant through his letter dated 3.9.2003 informed Parikarma World Travels that he would not be able to undertake this tour due to some unavoidable circumstances and sought refund of the booking amount of Rs.20,000/-. He also sent legal notices demanding refund and ultimately Parikarma World Travels issued two cheques of Rs.10,000/-each drawn from their own account maintained with IDBI Bank, the Mall Road, Ludhiana. These cheques when presented were returned with the remarks “payment stopped by the Drawer”. After issuing legal notice, a complaint under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act (hereinafter called the `Act') was filed leading to the summoning of the petitioners as well as M/s Parikarma World Travels.

On the basis of afore-mentioned facts, it is submitted by the counsel for the petitioners that no liability can be fastened with petitioner Company. It has neither issued the cheques nor had it received the payment. Accordingly, it is urged that the complaint filed against the petitioner company and the summoning order issued by the Judicial Magistrate Ist Class, Chandigarh are nothing but an abuse of the process of the Court. Prayer for quashing the complaint and the summoning order has accordingly been made.

Notice was issued and the reply has been filed. It is

stated in the reply that there are grounds to presume the commission of offence under Section 138 of the Act by the petitioner company, which is accused No.4 and its Manager appears to be personally responsible to the company for conduct of its business. Provisions of Section 141 of the Act are being invoked to allege liability on the part of the petitioner company. It has otherwise not been denied that the complainant had in fact approached M/s Parikarma World Travels and that receipt of the amount of Rs.20,000/- was given by the said Ludhiana based company. Averment has also been made that Parikarma World Travels were duly informed about the Multiple Entry U.S.Visa received by the complainant. The reply filed on behalf of the respondent-complainant does not indicate specifically any aspect of responsibility on the part of the petitioner company and says that the complainant had been dealing with Parikarma World Travels alone.

I have heard the counsel for the parties.

From the facts as narrated, it is clear that the complainant had not made any payment to the petitioner Company. He had not dealt with the petitioner Company in any manner. The cheque issued is not by the petitioner Company. The account maintained from which the cheque had been issued, has no concern with the petitioner Company. Accordingly, it can be said that from the facts of this case, no offence under Section 138 of the Act is made out against the petitioner company. It can not also be said that there was any liability on the part of the petitioner Company, which was required to be discharged. Under these circumstances, the present proceedings against the petitioner Company and its summoning is nothing but an abuse of process of Court. Ends of justice would require that

proceedings against the petitioner Company arising out of this complaint be brought to an end to secure the ends of justice and to avoid the abuse of the process of the court.

The present petition is accordingly allowed and the complaint No.221 of 2004, titled as Ram Asra Singla Vs. Managing Director, Thomas Cook (India) Ltd. and others, pending in the court of Judicial Magistrate Ist Class, Chandigarh and also of the summoning order passed in the said complaint qua the petitioner company alone are hereby quashed. It is made clear that the proceedings against the remaining accused shall continue and any observation in this order would not have any effect on the proceedings in progress against other accused.

December 06, 2006 (RANJIT SINGH)
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